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RECORDATION NO. \_\_\_\_\_ FILED 1425

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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1979

among

PULLMAN INCORPORATED  
(Pullman Standard Division),

NORTH AMERICAN CAR CORPORATION

and

LA SALLE NATIONAL BANK, as Agent

AGREEMENT AND ASSIGNMENT dated as of April 15, 1979, among PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), NORTH AMERICAN CAR CORPORATION, a Delaware corporation ("NAC"), and LA SALLE NATIONAL BANK, a national banking association, acting as Agent under a Participation Agreement dated as of the date hereof (said Participation Agreement being hereinafter called the "Participation Agreement" and said La Salle National Bank, in its capacity as Agent, being hereinafter called the "Assignee").

WHEREAS the Builder, NAC and Exchange National Bank of Chicago, as trustee (the "Vendee") under a Trust Agreement dated as of the date hereof with Republic National Leasing Corporation, have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by NAC, and the sale and delivery, on the conditions therein set forth, by NAC and the purchase by the Vendee, of the railroad equipment described in Annex B to the CSA (the "Equipment"); and

WHEREAS the Vendee and The Denver and Rio Grande Western Railroad Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to NAC, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. NAC hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of NAC in and to each unit of the Equipment when and as severally

delivered to and accepted by the Vendee and when and as payment is made by the Assignee to NAC of the amount required to be paid pursuant to Section 4 hereof and subparagraph (a) of the third paragraph of Article 4 of the CSA;

(b) all the right, title and interest of NAC in and to the CSA (except the right to deliver the Equipment and the right to receive the payments specified in the final sentence of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by NAC), and except as aforesaid in and to any and all amounts which may be or become due or owing to NAC under the CSA on account of the indebtedness in respect of the Vendee's Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all of NAC's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against NAC for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of NAC or the Builder to deliver the Equipment in accordance with the CSA or with respect to their respective warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to NAC or the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of NAC or the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against NAC and the Builder, as the case may be. In furtherance of the foregoing assignment and transfer, NAC hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for NAC, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be

performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA. The Builder and NAC severally agree to deliver the Equipment to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder or NAC, as the case may be. The Builder further agrees that it will warrant to the Assignee, NAC and the Vendee, and NAC further agrees that it will warrant to the Assignee and the Vendee, that at the time of delivery by each such party of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA, the Assignee under this Assignment and the Lessee under the Lease; and NAC and the Builder each further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such party under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. The Builder will not deliver any unit of the Equipment to NAC, and NAC will not deliver any unit of Equipment to the Vendee, under the CSA until the CSA and the Lease have been filed in accordance with 49 U.S.C. § 11303 (the Builder and NAC being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder and NAC severally agree (each such party hereinafter in this Section 3 being called an "Indemnifier") with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Vendee's Purchase Price or to enforce any provision of the CSA, the Indemnifier will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Indemnifier of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by

reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Indemnifier. The Indemnifier's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Indemnifier of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Indemnifier the right, at such Indemnifier's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder and NAC severally agree that any amounts payable to each of them by the Vendee or NAC, as the case may be, or the Lessee with respect to units of the Equipment for which settlement shall have been made by the Assignee as provided in Section 4 of this Assignment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon any of such units of the Equipment.

SECTION 4. The Assignee, on the Delivery Date (as defined in the CSA) fixed as provided in Article 4 of the

CSA with respect to the Group (as defined in the CSA) of the Equipment, shall pay to NAC an amount equal to the portion of the Vendee's Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee (with a copy to NAC and the Vendee) on the Delivery Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from NAC to the Assignee transferring to the Assignee all right, title and interest of NAC in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units to the Vendee under the CSA, NAC had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA, the Assignee under this Assignment and the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by NAC to the Vendee under the CSA;

(b) a bill or bills of sale from the Builder to NAC transferring to NAC and its successors and assigns all right, title and interest of the Builder in such units, warranting to NAC and its successors and assigns, to the Vendee and to the Assignee that, at the time of delivery to NAC of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA, the Assignee under this Assignment and the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder to NAC under the CSA;

(c) Certificates of Acceptance on behalf of NAC, the Vendee and the Lessee with respect to the units of the Equipment as contemplated by Article 3 of the CSA and § 2 of the Lease;

(d) NAC's Invoice (as defined in the CSA) for the

units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(e) an opinion of counsel for NAC, dated as of the Delivery Date, addressed to the Assignee and the Vendee, to the effect that the bill or bills of sale described in clause (a) above have been duly authorized, executed and delivered by NAC and are valid and effective to vest in the Assignee all right, title and interest of NAC in the units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery to the Vendee (other than those of the Assignee created by the CSA, this Assignment and the rights of the Lessee under the Lease) arising from, through or under NAC;

(f) an opinion of counsel for the Builder, dated as of the Delivery Date, addressed to the Assignee, NAC and the Vendee, to the effect that the bill or bills of sale described in clause (b) above have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in NAC all right, title and interest of the Builder in the units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery to NAC (other than those created by the CSA, this Assignment and the rights of the Lessee under the Lease) arising from, through or under the Builder;

(g) a receipt from NAC for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on the Delivery Date to NAC with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

(h) a certificate from the Builder acknowledging receipt by it of full payment of NAC's Purchase Price (as defined in the CSA) required to be made on the Delivery Date to the Builder with respect to the Equipment; and

(i) a certificate of an independent appraiser to the effect that the Vendee's Purchase Price as set forth in NAC's Invoice for the Equipment in the Group for which settlement is to be made is not in excess of the

fair market value of such Equipment. For the purpose of this certificate, fair market value shall be determined on the basis of, and shall be equal in amount to, the amount which would obtain in an arm's-length sales transaction between an informed and willing buyer (other than the Vendee) and an informed and willing seller under no compulsion to sell or buy on such date.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to NAC, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby represents and warrants to NAC, the Assignee, the Vendee and their respective successors and assigns, that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by NAC and the Vendee, the CSA and this Assignment are, insofar as the Builder is concerned, legal, valid and binding agreements upon the Builder and, in the case of the CSA, enforceable in accordance with its terms and that it is now in force without amendment thereto.

The Builder and NAC severally agree that:

(a) each will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment,



transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(b) subsequent to the payment in full of the Vendee's Purchase Price, upon request of the Assignee, its successors and assigns, each will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder or NAC, respectively, therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

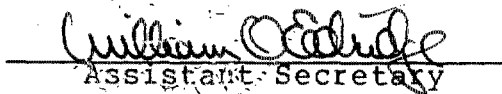
PULLMAN INCORPORATED (Pullman  
Standard Division),

[Corporate Seal]

by

Attest:

  
Vice President ~~Freight Unit~~

  
Assistant Secretary

LA SALLE NATIONAL BANK, as Agent,

by \_\_\_\_\_

[Seal]

Attest:

\_\_\_\_\_

NORTH AMERICAN CAR CORPORATION,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF ILLINOIS, )

) SS. :

On this 25 day of April 1979, before me personally appeared E. J. Ahquist, to me personally known, who being by me duly sworn, says that he is Vice President ~~Freight Unit~~ of PULLMAN INCORPORATED (Pullman Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

My Commission expires 8-11-79

STATE OF ILLINOIS, )

SS.:

On this                    day of                    1979, before me personally appeared                    , to me personally known, who being by me duly sworn, says that he is                    of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                      day of                      1979, before me personally appeared                      , to me personally known, who being by me duly sworn, says that he is                      of NORTH AMERICAN CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 15, 1979.

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but  
solely as Trustee,

by

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